

## **REMARKS**

Applicant is in receipt of the Office Action mailed October 5, 2004. Claims 1 – 68 were rejected. Claims 1, 46, 60 – 62, 66, and 68 have been amended. Claim 32 has been cancelled. Claims 1 – 31 and 33 – 68 remain pending in the application.

### **Double-Patenting Rejections**

Claims 1 – 68 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 69 of co-pending Application No. 10/047,014, and claims 1 – 60 of co-pending Application No. 10/046,861. Applicant is willing to file Terminal Disclaimers if necessary to overcome these rejections in the event the conflicting claims are patented.

### **Section 103 Rejections**

Claims 1 – 68 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication 2001/0034881 (Washington). Applicant respectfully traverses this rejection.

It is noted that the subject matter in the presently rejected claims was conceived prior to the effective date of the Washington reference. Applicant has considered filing an oath or declaration under 37 C.F.R. §1.131 to establish prior invention, or to have the Washington reference removed as prior art under 35 USC 103(c). However, Applicant believes that it is not necessary to file such an oath or declaration at this time because the present claims are clearly patentable over Washington.

As the Examiner is certainly aware, to establish a *prima facie* obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974), MPEP 2143.03. Obviousness cannot be established by combining or modifying the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion or incentive to do so. *In re Bond*, 910 F. 2d 81, 834, 15 USPQ2d 1566, 1568 (Fed. Cir. 1990). As held by the U.S. Court of Appeals for the Federal Circuit in *Ecolochem Inc. v. Southern California Edison Co.*, an obviousness claim that lacks evidence of a suggestion or motivation for one of

skill in the art to combine prior art references to produce the claimed invention is defective as hindsight analysis.

In addition, the showing of a suggestion, teaching, or motivation to combine prior teachings “must be clear and particular. ... Broad conclusory statements regarding the teaching of multiple references, standing alone, are not ‘evidence’.” *In re Dembiczak*, 175 F.3d 994, 50 USPQ2d 1614 (Fed. Cir. 1999). The art must fairly teach or suggest to one to make the specific combination as claimed. That one achieves an improved result by making such a combination is no more than hindsight without an initial suggestion to make the combination.

However, Washington does not teach or suggest several elements of the present claims, and certainly does not teach or suggest the combination of elements recited in the present claims, and therefore provides no basis for establishing prima facie obviousness. For example, amended claim 1 recites:

1. A method for simulating a product being designed, the method comprising:

creating a first graphical program that models the product being designed, wherein the first graphical program is created in a first graphical program development environment;

deploying the first graphical program on a target device for execution;

creating a second graphical program that performs a measurement function, wherein the second graphical program is created in a second graphical program development environment, wherein the second graphical program development environment is different than the first graphical program development environment;

coupling the target device to a physical system;

executing the first graphical program on the target device to simulate operation of the product, wherein the target device interacts with the physical system;

executing the second graphical program concurrently with the first graphical program to measure at least one of: 1) characteristics of the operation of the physical system and/or 2) characteristics of the operation of the product; and

displaying a single graphical user interface comprising a first one or more graphical user interface elements for the first graphical program and a second one or more graphical user interface elements for the second graphical program.

Applicant first notes that the second graphical program is executed concurrently with the first graphical program. However, Washington contains no teaching regarding the concurrent execution of two different graphical programs. Moreover, Washington does not teach executing a first graphical program concurrently with a second graphical program, where the first graphical program simulates a product being designed and the second graphical program measures characteristics of the operation of the product or characteristics of a physical system coupled to a target device on which the first graphical program is executed. Applicant also submits that Washington contains no suggestion whatsoever that would motivate one to perform concurrent execution of two such graphical programs in this manner.

Furthermore, Washington does not teach executing a first graphical program concurrently with a second graphical program, where the first graphical program is created in a first graphical program development environment and the second graphical program is created in a second (different) graphical program development environment. Applicant also submits that Washington contains no suggestion whatsoever that would motivate one to perform concurrent execution of two graphical programs created in two different graphical program development environments.

Applicant also submits that displaying a single graphical user interface that comprises graphical user interface elements for two concurrently executing graphical programs created in different graphical program development environments is a novel feature that is unknown in the prior art. Applicant respectfully disagrees with the Examiner's statements regarding this element of claim 1. The Examiner states that, "In light of Washington teaching of generating multiple graphical programs and measuring performance of a being modeled physical system, it would be naturally desirable to have a single GUI on which the user can control or monitor operations of the concurrently running multiple graphical programs." Applicant acknowledges that Washington teaches the concept of a GPG program that in various embodiments may be operable to

programmatically generate graphical programs that perform various functions, and that in various embodiments may be operable to programmatically generate graphical programs associated with different graphical program development environments. However, Washington contains no teaching or suggestion whatsoever that would motivate one to perform a concurrent execution of two different graphical programs that are programmatically generated. The mere fact that different kinds of graphical programs can be programmatically or automatically generated provides no more motivation for performing a concurrent execution of different graphical programs than does the fact that different kinds of graphical programs can be manually created in different graphical program development environments in response to direct user input.

Therefore, Applicant respectfully disagrees that Washington contains any teaching or suggestion that would motivate one to perform a concurrent execution of two different programmatically generated graphical programs that have the functionality recited in claim 1 and/or that are associated with two different graphical program development environments. Moreover, even if Washington did suggest the concept of concurrently executing two different graphical programs as recited in claim 1, this would not provide sufficient motivation to lead one skilled in the art to implement a single graphical user interface comprising graphical user interface elements for both of the graphical programs. Washington contains no teaching or suggestion that would lead one to create a single graphical user interface comprising graphical user interface elements for graphical programs created in different environments. Applicant submits that a single graphical user interface that comprises graphical user interface elements for two concurrently executing graphical programs created in different graphical program development environments is a novel concept that is unknown in the prior art and respectfully requests that the Examiner provide a reference that teaches the concept of such a single graphical user interface.

Thus, for at least the reasons provided above, Applicant respectfully submits that claim 1, and claims dependent thereon, are patentable over Washington. Independent claims 46, 60 – 62, 66, and 68 recite similar features as claim 1, and so for at least the reasons provided above, Applicant submits that these claims, and claims respectively dependent thereon, are also allowable.

Applicant also asserts that numerous ones of the dependent claims recite further distinctions over Washington. However, since the independent claims have been shown to be patentably distinct, a further discussion of the dependent claims is not necessary at this time.

## CONCLUSION

Applicant submits the application is in condition for allowance, and an early notice to that effect is requested.

If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above referenced application(s) from becoming abandoned, Applicant(s) hereby petition for such extensions. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert & Goetzel PC Deposit Account No. 50-1505/5150-64600/JCH.

Also enclosed herewith are the following items:

☒ Return Receipt Postcard

Respectfully submitted,



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Jeffrey C. Hood  
Reg. No. 35,198  
ATTORNEY FOR APPLICANT(S)

Meyertons, Hood, Kivlin, Kowert & Goetzel PC  
P.O. Box 398  
Austin, TX 78767-0398  
Phone: (512) 853-8800  
Date: 1/5/2005 JCH/JLB